

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

FILED

February 5, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

RIVERS RUN PROPERTIES, INC.,)	
)	
Plaintiff/Appellee)	ANDERSON CHANCERY
)	
v.)	
)	
CITY OF OAK RIDGE, TENNESSEE,)	NO. 03A01-9609-CH-00299
)	
Defendant/Appellant)	AFFIRMED

Robert W. Wilkinson, Oak Ridge, For the Appellant

Bernard E. Bernstein, Knoxville, For the Appellee.

OPINION

INMAN, Senior Judge

This is an action for a declaratory judgment that the plaintiff is entitled to acquire a 12.38 acre tract of unimproved land from the defendant City.

On July 17, 1987, the City agreed to sell to the plaintiff a tract of 24 acres and further agreed to give the plaintiff a right of first refusal to purchase an additional tract of approximately 175 acres, more or less, as set forth in a map attached to the contract.

The right of first refusal was contingent upon the City being enabled to acquire subject land from the Department of Energy of the United States. The map black-lined the boundaries of the DoE tract.

The tract was in course acquired by the City. A survey revealed that it contained 187.38 acres. The City offered 175 acres to the plaintiff pursuant to the right of first refusal; the plaintiff insisted that it was entitled to all of the land encompassed by the boundaries as shown by the map.

The only oral testimony offered at the trial was that of Mr. Adams, the surveyor employed by the City. Mr. Adams testified that he was furnished a sketch of the property which the City contracted to sell and that his firm was employed to

prepare the survey using his best professional determination as to the size, shape and acreage of the land shown in the sketch. In preparing his boundary survey, Mr. Adams explained that certain elements had to be recognized. According to him, the eastern boundary of the property had to be Melton Lake Drive, an existing road. The northern boundary had to be land that had previously been conveyed to Mr. Norris. The northwestern corner of the property had to be a point where lands owned by the University of Tennessee and the Department of Energy met. The southeastern corner of the property was based upon an existing TVA monument. The tract contained 187.38 acres, rather than 175 acres as contended by the City. Mr. Adams testimony was not contested or rebutted.

The trial judge found that the parties intended to convey all of the acreage encompassed by the black-marked boundaries on the map, which proved to be 187.38 acres. The sale was acreage-based and, thus, the plaintiff reaps no windfall. The map, as sketched, was prepared by the City, which had a reasonable opportunity to limit the size of the property it wanted to sell and to instruct its engineer, Mr. Adams, accordingly. It did neither and, thus, allowed all parties to rely upon the black-marked boundaries of the map. At no time did the City announce that it was selling 175 acres, strict measure. The black-marked boundaries were either monumented, natural or other recognized property lines.

Of significance also is the use of the modifier “approximately” or the ancient expression “more or less,” indicative of a lack of preciseness in acreage or distance. *See Reed Bros. Stove Co. v. Pittman Constr’n Co.*, 101 S.W.2d 478, 482 (Tenn. Ct. App. 1936). The City recognized the uncertainty of the acreage, and we cannot find that the evidence preponderates against the judgment. TENN. R. APP. P.. 13(d). The judgment is affirmed at the costs of the appellant.¹

¹On the day of trial, the City filed a motion to dismiss for failure to join The Cowperwood Company, Inc., a Texas corporation, as a defendant. This motion relied upon an agreement between the City and Cowperwood dated April 1, 1994, whereby the latter agreed to build a golf course on property adjacent to the land contracted to the plaintiffs. Additionally, if Cowperwood fulfilled certain conditions, it was granted an option to acquire property to develop a subdivision. The City’s motion to dismiss was denied and, one month later, Cowperwood filed a motion to intervene, which was also denied. Cowperwood did not appeal from that ruling. The record reflects that both the City and Cowperwood were aware of the acreage

William H. Inman, Senior Judge

CONCUR:

Herschel P. Franks, Judge

Don T. McMurray , Judge

dispute with the plaintiff. The City filed a third-party action against Cowperwood. In any event, the rights of the parties must be determined as of the date of the contract between the plaintiff and the City, July 13, 1987, long before Cowperwood became involved.